


LET'S SOAR IN '24

# 2024 Labor Law Update



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## Contact us today!

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<https://www.montereycountyworks.com>

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**We will cover:**

- Mandatory PSL Expansion
- New Reproductive Loss Leave
- Cannabis-Use Rights
- Workplace Violence Prevention Plan Requirements
- Minimum Wage and Exempt Salary Increases
- Agency & Regulatory Changes
- FAQs and More!

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**This Year's Takeaway:**

2024 is the year to update your **employee handbook**. All employers must provide more paid sick leave, new employee-friendly NLRB standard for determining if workplace rule is unlawful, new FEHA protections, etc.

Email handbook requests to [CEAinfo@employers.org](mailto:CEAinfo@employers.org)

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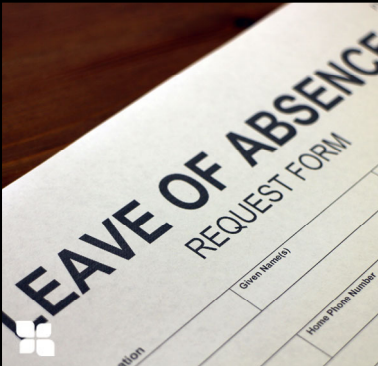
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**Leaves of Absence Expansion**

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## SB 616: PSL Expansion

- Increases annual amount of paid sick leave from three days or 24 hours, to **five days or 40 hours**. May use five days or 40 hours each year.
- Can still use **lump sum or accrual method**
- For accrual method, the cap on sick leave is increased from 48 hours or six days, to **80 hours or 10 days**
- Accrual rate is still at least one hour for every 30 hours worked (which includes overtime hours)



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## PSL Expansion Cont.

- If employers use the **alternative accrual method**, which must **guarantee 24 hours of PSL** by 120th calendar day of employment, employer must now guarantee at least **40 hours of PSL by the 200th calendar day** of employment



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## Question:

We use a **lump sum approach**, based on **anniversary date**. We previously gave 3 days/24 hours. Can we wait until each employee's anniversary date next year to reset to 5 days/40 hours?



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## Answer:

- **No.** You can either furnish everyone with the **additional 2 days/16 hours** as of January 1 and continue using anniversary dates as the reset going forward OR change your policy to **reset everyone on January 1** each year instead and provide the 5 days/40 hours.



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## Question:

How do I address the new PSL requirements?



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## Answer:

- Update your PSL policy and required poster
- Will you alter your vacation accruals or paid holidays?
- Update Wage Theft Notices (LC s. 2810.5) for hourly employees (updated template from DIR)
- Update PSL amounts listed on wage statements
- Review local sick leave ordinances as applicable

Need **workplace posters**?  
Available on CEA's store at **employers.org**



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## SB 848: Reproductive Loss Bereavement Leave

- Employers with **5 or more employees** must provide **5 days** of bereavement leave for each "**reproductive loss event**"
- Eligible: employed 30+ days
- May limit to 20 days in a 12-month period
- Defined as: failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction.
- Confidentiality protections
- **Cannot request certifying documentation**



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## Reproductive Bereavement Cont.

- Must use leave **within 3 months** of event (unless employee takes another protected leave first, e.g., CFRA/FMLA [does not run concurrently] = may take bereavement after other leave)
- Leave days **need not be consecutive**
- **Unpaid** but employees may use accrued time
- **Revise bereavement leave policy!**



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## New Employee Protections

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## AB 2188: Cannabis-Use Rights



- New FEHA protected class
- Employers cannot **discriminate** or take **adverse action** against employee or applicant for using **cannabis while off the job and away from the workplace**
- Does **not permit** an employee to **possess** or be **impaired** by cannabis while on the job
- **Exceptions:** Building and construction trades, when testing required by state/federal law, etc.

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## AB 2188: Drug Screening



- Employers who drug test (i.e., pre-screening, post-accident, etc.) cannot test for non-psychoactive components, which indicates past use in prior week(s)
- Practical Result: Employers may either: (1) choose not to test for cannabis (apply policy consistently), or (2) use a compliant test (e.g., saliva) rather than urine
- Work with a drug screening provider



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## SB 700: Cannabis History

- Also **unlawful to request information** from an applicant regarding their prior **cannabis use**
- **Exception:** may consider prior cannabis use obtained in connection with **criminal history ONLY IF** employer follows **all requirements under Fair Chance Act** (more on that soon!)



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## To Dos:

- If you have tested employees for cannabis, determine whether you will continue to test for it or use saliva-based or other compliant testing
- Update drug policies as needed
- Train managers on new protections



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## SB 699: Non-Compete Agreements

- Expands CA's **prohibition on non-compete agreements** under Business and Professions Code
- Protections apply **regardless of where/when contract was signed** and where **employment was maintained** (i.e., even outside of California)
- Creates a **private right of action** for violations, including attorney's fees, for prospective, current, and former employees
- **Audit your employment agreements and consult legal counsel**



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## AB 1076: Void Notice (Non-Competes)



- Employers must send a **written, individualized communication** to all **current and former employees** who were employed after **January 1, 2022** and **entered into a non-compete clause or agreement** (unless under a permitted exception in Business & Professions Code)
- **Deadline: February 14, 2024** (Happy Valentine's Day!)
- Must send to **last known address and email address**
- Violations = unfair competition claim



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## SB 497: Retaliation Presumption

- Creates a **rebuttable presumption** that employer engaged in **unlawful retaliation** if they take **adverse action against** the employee **within 90 days** of the employee's protected action under the Labor Code (e.g., wage claim or complaint about equal pay)
- **Outcome:** Employer will have **burden** of proving with **sufficient evidence** that adverse action was **not** related to protected activity



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## Agency & Regulatory Updates



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## FAIR CHANCE ACT

### CAN'T INQUIRE INTO CRIMINAL HISTORY

Prohibits employers with 5 or more employees from inquiring into criminal history in the interview process

### UNTIL AFTER A CONDITIONAL JOB OFFER

Can ask about past criminal history (and/or conduct a background check) AFTER a conditional job offer has been extended

### CAN ONLY DENY JOB IF "DIRECT AND ADVERSE" RELATIONSHIP TO DUTIES

Even if something "pops up" in the background check process, can't deny job UNLESS able to show conviction history has a "direct and adverse" relationship with the specific duties of the job



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## Expanded Protections

In addition to protecting candidates for employment, regulations now also protect:

- employees applying for internal positions
- employees indicating a desire to be considered for a different position

Also includes situations when employees are being evaluated due to organizational changes in ownership, management, policies or practices (e.g., after a business is sold)



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## Question:

My manager was having a casual conversation with our employee, Betty, who disclosed she has a drug conviction. My manager does not want to consider her for promotion now. Is this okay?



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## Answer:

**No!** The manager must first consider her without regard to criminal history (employees up for promotion are protected). The law applies even if the disclosure is unprompted and **voluntary**.



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## New Considerations for Individualized Assessment

- **Additional factors** to consider for assessment
- **CEA has a fact sheet for members**
- Applicant **may choose to provide** evidence challenging conviction, or rehabilitation and/or other mitigating circumstances
- Employer **cannot require** applicant to provide this information and/or specific documentation

**Document examples** (must be considered if provided):

- Employment history records;
- Vocational, training, rehabilitation certificates;
- Letters of Reference;
- Documentation of traumas; (e.g., police reports)
- Documentation of disability (e.g., medical records)



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## NLRA Overview

- The NLRA, which is enforced by the National Labor Relations Board, includes protections which apply to **all employees**
- It is a common **misconception** that NLRA protections only apply to union employees/CBAs
- **Section 7** grants employees the right to **communicate about wages, hours, and terms & conditions of employment**



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## NLRB & Workplace Rules

**Based on recent cases:**

- A challenged workplace rule will be **presumed unlawful** if it has a **reasonable tendency to chill employees' exercise of their rights**
- The employer may rebut that presumption by proving that the rule **advances a legitimate and substantial business interest** and **cannot advance that interest with a more narrowly tailored rule**
- For more information: [California Employers Association - Review Your Policies With a Magnifying Glass](#)

**These issues have been addressed in CEA's 2024 Handbook. Contact CEA for handbook/update options**



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## Examples:

- **Unlawful:** "Discuss work matters only with other employees who have a specific business reason to know or have access to such information."
- **Likely Permitted:** "Do not disclose confidential financial data or other nonpublic proprietary company information. Do not share confidential information regarding business partners, vendors, or customers."



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## To Dos:

- **Audit** job applications, interview questions, etc. to ensure compliance with criminal history protections
- **Train** managers/those involved in hiring process on prohibited criminal history questions
- **Audit/update** employee handbooks and policies in accordance with new NLRB standard



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## Wage & Hour

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## Minimum Wage & Exempt Salaries

All Employers – Regardless of Size!	
Non Exempt / Hourly	Exempt / Salary (Yearly)
\$16.00	\$66,560

For employee relations tips on transitioning from exempt to non-exempt: [bit.ly/Exempt\\_to\\_Nonexempt](https://bit.ly/Exempt_to_Nonexempt)

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## 40+ Local Minimum Wage Laws



- Over 40 local ordinances!
- Minimum wage, paid sick leave, predictive scheduling, flex-time
- The **local minimum wage** is based on where the employee is **physically working** (e.g., home residence)
- For minimum wages by location: <https://bit.ly/41CsVi8>
- More on **industry-specific wages** in a bit...

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## Personal Vehicle Usage

- Must reimburse costs incurred by employee on behalf of the business, including mileage when personal vehicle is used for work
- IRS Mileage Rate:
  - 2023: 65.5 cents/mile
  - January 1, 2024: 67 cents/mile**
- Must pay hourly employees for actual drive time (i.e., work time) in addition to mileage reimbursement



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## Physician/Computer Prof. Salaries

### Physicians/Surgeons:

Minimum hourly pay for licensed physicians / surgeons increased from \$97.99 to **\$101.22**



### Computer Software Professionals:

–Minimum hourly rate of pay increased from \$53.80 to **\$55.58**

–Minimum monthly salary increased from \$9,338.78 to **\$9,646.96**

–Minimum annual salary increased from \$112,065.20 to **\$115,763.35**



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## Remote Work Expense Reimbursements



If you require remote or hybrid work (or encourage it): you should cover at least “basic WFH costs” such as:

- Internet (and likely other utilities)
- Office equipment (e.g., laptop, printer, etc.)
- Personal mobile phone use

You may determine a “**reasonable percentage**” of the total costs that represents work-related usage. One option is to pay a monthly stipend sufficiently covering these costs.

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## To Dos:

- Check your **county** and **city** minimum wage laws
- Expect minimum wage **poster updates**
- Execute **remote work agreements** to define remote work parameters, including reimbursement
- Pay compensable time and **reimburse** employees for business-related travel beyond their normal commute
- **Budget** for minimum wage and salary increases



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## Safety Updates

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## SB 553: WVPP

- **New requirement** to establish, implement, and maintain a written **workplace violence prevention plan (WVPP)** by **July 1, 2024**
- Includes **training requirement** for employees when WVPP is established and annually thereafter



**Exceptions:**

- Teleworking employees
- Places with fewer than 10 employees at any given time & not accessible to the public + a compliant IIPP
- Healthcare facilities (already covered in their own standard)
- Dept. of Correction and Rehabilitation facilities
- Law enforcement agencies

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## WVPP Cont.

- May be incorporated into IIPP or as a **standalone** document
- **Inspections required** when plan is first established, after incidents/new hazards, and periodically
- Must record incidents on **violent incident log** following **investigation**
- **Records** of identification, evaluation, and correction maintained for at least 5 years
- Training records maintained for 1 year
- Requires Cal/OSHA to propose standards for WVPP by Dec. 31, 2025, and by **Dec. 31, 2026**, for the Standards Board to adopt the standards

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## Question:

What are some examples of recordable violent incidents?



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## Answer:

- Physical attack with or without a weapon;
- Threat of physical force or use of weapon;
- Sexual assault or unwanted verbal or physical sexual conduct (consider employee complaints!);
- Animal attack;
- Other



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## To Dos:

- Prepare workplace violence prevention plan by July 1, 2024
- Who is responsible for implementing your plan?
- Prepare to deliver training to employees on your plan by July 1, 2024, and **annually** thereafter
- Prepare for inspection and record-retention requirements



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## COVID Reminders



- Cal/OSHA's "Permanent" COVID Standard in effect through **February 3, 2025** (with certain record-keeping requirements lasting until February 3, 2026)
- Still required to have a written **COVID Prevention Plan**, **required exclusion after testing positive**, additional **precautions during outbreaks**, etc. (CEA members refer to our **COVID Toolkits!**)
- **No longer required:** Employee notification of **positive cases** and **reporting to workers' compensation carrier** as of **January 1, 2024**
- Must still notify anyone who is a **close contact!**



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## Industry-Specific Updates



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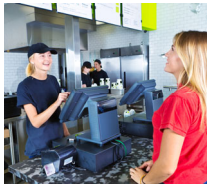
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## AB 1228: Fast Food Chains

- Agreement between labor and fast-food companies: FAST Act was repealed (AB 257) and replaced with new terms under AB 1228
- **\$20/hour minimum wage** will go into effect on **April 1, 2024** for covered workers
- **Fast Food Council** (under DIR) created to recommend working conditions and set minimum wage each year (subject to caps) **until 2029**



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## Who is Covered?

All "limited-service restaurants" that are part of **chains with over 60 establishments nationally**. Limited-service restaurant defined as **primarily engaged** in:

- Providing food & beverages for **immediate consumption** on or off premises
- Patrons generally **order** or select items and **pay before consuming**
- With **limited or no table service**
- Includes, **but not limited to**, **NAICS Code 722513**
- **Exceptions** for qualifying **bakeries** and **grocery stores**
- Unsure of coverage? **Consult legal counsel**



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## AB 1228's Open Questions:

- What is meant by the term "**primarily engaged?**"
- Are **covered exempt employees** entitled to an annual salary of **\$83,200** (2 X \$20 X 2080)? **Likely yes.**
- For restaurants that operate **within a different business** (e.g., a Starbucks inside a Target, or a Subway inside a gas station), how does the fast food minimum wage apply?
- Will we see a **de-facto \$20/hour minimum wage?**
- What **new standards** can we expect from FFC?



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## SB 476: Food Handler Cards

- California requires food handlers in restaurants to obtain certification cards within 30 days of hire (valid for 3 years)
- California employers **now responsible** for **all associated costs**, in event employee does not have a valid/current card
- This includes: **cost of training/testing**
- Also: employers must pay for time it takes to complete the certification (i.e., **compensable time**). Employees must be relieved of all duties and take the training/testing during work time
- Employers **cannot condition employment** on applicant or employee having existing food handler card
- **Update policies, hiring/onboarding practices, etc.**



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## SB 525: HC Minimum Wage

- Creates a comprehensive minimum wage scheme for "covered healthcare employees," with 5 different schedules depending on how facility is classified.
- Classification is based on a number of factors
- Initially, minimum wages range from **\$18/hour to \$23/hour by June 1, 2024**, with set **future increases** thereafter
- To qualify as **exempt**, employees must be paid **1.5 times** the HC minimum wage or **2 times** the applicable minimum wage, whichever is greater
- Opportunity for waiver with DIR
- Generally does not include dental offices but does include community clinics
- **Consult legal counsel regarding coverage and waiver questions**



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## Honorable Mentions:

- COVID-19 Right of Recall (SB 723)
- Indoor Heat Illness Standard??



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## Training Codes



### HRCI:

The use of this seal confirms that this activity has met HR Certification Institute's (HRCI) criteria for recertification.



### SHRM:

CEA is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CPSM and SHRM-SCP. For more information about certification or recertification, please visit [shrmcertification.org](http://shrmcertification.org).

For more information: [CEAinfo@employers.org](mailto:CEAinfo@employers.org)  
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## CEA Membership

### ULTIMATE

- Unlimited HR phone support
- Online access to tool kits and forms
- Free harassment prevention online trainings
- Customized employee handbook (\$2,000 value)
- Labor law poster
- Consulting hours for compliance projects (8)
- 50 point HR assessment
- One virtual or onsite compliance training
- Dedicated HR partner with quarterly check-ins (\$1,000 value)

**\$5,995**

MEMBER CHOICE

### PREMIER

- Unlimited HR phone support
- Online access to tool kits and forms
- CEA University
- Labor law poster\*
- Consulting hours for compliance projects (8)
- Online harassment prevention training

**\$2,595**

### ASSOCIATE

- Unlimited HR phone support
- Online access to tool kits and forms
- CEA University
- Labor law poster\*
- Available as a \$109/month subscription
- Online harassment prevention training

**\$1,245**

Associate memberships available for **\$109/month**

Give us a call at **800.399.5331** for more details.

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## Your feedback matters!

Help us improve trainings & build resources for you!

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## Monterey County Works Business Services

We help businesses stabilize, strengthen and grow!

### RECRUITMENT

- Job & Career Fairs
- Customized Recruitment
- Job Boards &
- Other Promotional Activities

### TRAINING

- Incumbent Worker Training
- On-the-Job Training
- Layoff Aversion

### RESOURCES & OTHER SERVICES

- Human Resources Hotline
- Resources & Referrals for Business Solutions
- Rapid Response: Employee and Employer Support during Downsizing
- Employer Hiring Videos

MONTEREY COUNTY WORKS  
GROWING TALENT • SUPPORTING BUSINESS

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**MONTEREY COUNTY WORKS**  
**2024 Employer Webinar Series**  
(Open for Businesses Located in Monterey County)

WEDNESDAY, JANUARY 14  
 10:00 AM - 11:00 AM  
**2024 Labor Law Updates**  
 Hosted by: Laura Kershner  
 REGISTER HERE

WEDNESDAY, FEBRUARY 14  
 10:00 AM - 11:00 AM  
**2024 Year-End Summary**  
 Hosted by: Laura Kershner  
 REGISTER HERE

**MONTEREY COUNTY WORKS**  
 344 SALINAS ST., 2nd FLOOR  
 Salinas, CA 93901

**ON-LINE WEBINARS**

WEDNESDAY, MARCH 4  
 10:00 AM - 11:00 AM  
**Compensation, Benefits, and Time Off**  
 Hosted by: Laura Kershner  
 REGISTER HERE

WEDNESDAY, JUNE 11  
 10:00 AM - 11:00 AM  
**2024 PBA Year-End Summary**  
 Hosted by: Laura Kershner  
 REGISTER HERE

WEDNESDAY, APRIL 14  
 10:00 AM - 11:00 AM  
**Harassment, Assault, and Retaliation**  
 Hosted by: Laura Kershner  
 REGISTER HERE

WEDNESDAY, APRIL 14  
 10:00 AM - 11:00 AM  
**What is a Contract?**  
 Hosted by: Laura Kershner  
 REGISTER HERE

**CALL**  
 Your HR Hotline at  
 (831) 796-3341  
 Monday - Friday, 9:00 AM - 5:00 PM  
 HR Support Hours: 9:00 AM - 5:00 PM

MONTEREY COUNTY WORKS  
 BOARD OF SUPERVISORS

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**MONTEREY COUNTY WORKS**  
 GROWING TALENT - SUPPORTING BUSINESS

**Contact us today!**

Laura Kershner  
 Phone: (831)796-3341

Email: [KershnerL@co.monterey.ca.us](mailto:KershnerL@co.monterey.ca.us)  
 Website: <https://www.montereycountyworks.com>

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California Employers Association  
 Supporting Employers Since 1937

**Thank You**

CEAinfo@employers.org  
 800-399-5331  
 employers.org

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